

SENATE BILL NO. 272

BY SENATOR MCPHERSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 40:2116(A), (B) and (D), and to enact R.S. 40:2116(G) relative  
3 to a moratorium on Title XIX certified beds in nursing facilities; to provide for the  
4 encouragement of the diversification of long-term care facilities; to provide for rule  
5 promulgation by the Department of Health and Hospitals; and to provide for related  
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:2116(A), (B) and (D) are hereby amended and reenacted and R.S.  
9 40:2116(G) is hereby enacted to read as follows:

10 §2116. Facility need review

11 A. The Department of Health and Hospitals, in accordance with the  
12 Administrative Procedure Act, shall establish a facility need review process  
13 consistent with the regulations for Title XIX of the Social Security Act.

14 B. The department shall promulgate rules and regulations in accordance with  
15 the Administrative Procedure Act to provide for facility need review. The rules and  
16 regulations shall include but not be limited to the following:

17 (1) Criteria for review of ~~nursing facility beds, and~~ beds in adult residential  
18 care homes as defined in R.S. 40:2153, and community and group home beds for the  
19 mentally retarded to determine if there is a need for additional beds to enroll and  
20 participate in the Title XIX program.

21 **(2) Criteria for review of nursing facility beds to determine if there is a**  
22 **need for additional beds to be licensed and enrolled in the Title XIX program.**

(2)(3) Specific duties of the department to review proposals for new facilities and determine the need therefor.

(3)(4) Appropriate methodology for the collection of data necessary for the administration of the program.

~~(4)~~(5) Procedures to grant and revoke approvals.

~~(5)~~(6) Establishment of application fees.

~~(6)~~(7) Procedures for review of applications by the department.

~~(7)~~**(8)** Procedures to request a fair hearing from a determination made by the department.

~~(8)~~(9) Provisions for judicial review from the decision rendered after a fair hearing.

(10) Criteria for review of beds issued pursuant to a department waiver to determine if there is a need for such beds to be licensed and enrolled in the Title XIX program. Provided, however, that providers of services may be enrolled and participate in such a Title XIX program only if and when the department develops a cost-effective plan for medical residential care services that is cost neutral with respect to existing Medicaid long-term care services and expenditures, or the legislature specifically provides funding for such services.

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**D.(1) In order to accomplish cost effectiveness of beds issued pursuant to a department waiver, the department may promulgate rules that include but are not limited to the following:**

(a) A bed abeyance program to reduce nursing facility beds by ten percent or more. Such an abeyance program shall include a time frame in which a determination is made as to whether beds should be brought out of abeyance based upon a ninety-three percent occupancy rate within a service area.

**(b) An increase in the minimum occupancy level required for a nursing facility to fully recover its capital cost.**

**(c) In order to achieve a reduction in long-term care institutional costs,**

1 a program for reduction of certificates of need for nursing facility beds, which  
2 may include a buyback program, provided such a buy back program is  
3 approved by the Center for Medicaid and Medicare Services and is eligible for  
4 federal funds participation.

5 (d) A bed exchange program that allows a nursing facility to create adult  
6 residential care beds based on the permanent elimination of existing nursing  
7 facility beds.

8 ~~Ð.(2)~~ The Department of Health and Hospitals shall implement a moratorium  
9 on Title XIX certified beds for nursing facilities. The Department of Health and  
10 Hospitals shall not approve any additional nursing facilities or beds in nursing  
11 facilities through facility need review to participate in the Title XIX program of the  
12 Social Security Act. This prohibition shall apply only to applications for new beds  
13 not approved prior to July 1, 1996. ~~This prohibition shall not apply to the~~  
14 ~~replacement of existing facilities.~~ Such prohibition shall become enforceable on July  
15 1, 1996, and shall remain in effect until July 1, 2008 **2010**. This prohibition shall not  
16 apply to the replacement of existing facilities **until June 30, 2007. However, this**  
17 **prohibition shall not apply to an operator who had plans for a replacement**  
18 **facility recommended for tentative approval by the division of engineering and**  
19 **architectural services of the Department of Health and Hospitals on or before**  
20 **July 1, 2005 and who has reached vertical construction by October 1, 2005.**  
21 **Vertical construction shall exist when all of the following criteria are met:**

22 **(a) The entire foundation slab has been poured, unless an extension of**  
23 **not more than sixty days has been granted by the secretary of the Department**  
24 **of Health and Hospitals due to circumstances beyond the control of the**  
25 **operator.**

26 **(b) Vertical framing of the facility has begun.**

27 **(3) The Department of Health and Hospitals shall promulgate rules and**  
28 **regulations, in accordance with the Administrative Procedure Act, regarding**  
29 **the emergency replacement of existing nursing facilities destroyed by fire or as**  
30 **a result of a natural disaster, or replacement of facilities owned by a**

government agency as a result of a potential health hazard, eliminating the need for approval through the facility need review process.

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G. The Department of Health and Hospitals shall develop and implement policies and procedures to require nursing facilities and ICF/MR providers to notify new residents and their families and guardians of sex offenders living in their facilities upon admission. The notification shall continue for as long as the information is considered a public record. During the annual licensing process, health standards surveyors shall verify providers' compliance with the policy.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_